is, assuming these two authorities have laid down the correct principle, whether on the facts of the present case it is applicable. The learned Acting Solicitor-General says it is not.

In *Vincent Lee* v. *Rex, supra,* the appellant, a volunteer special constable duly vested with all the powers and privileges of a police officer had threatened various persons who were smoking chandu with arrest. He was charged and convicted of the offence of extortion under section 384 of the Penal Code. Murray-Aynsley C.J. in allowing the appeal had this to say:

"The offence of extortion is defined in section 383 of the Penal Code. It will be seen that an essential part of the offence is putting a person in fear of 'injury'. In turn 'injury' is defined in section 44 of the same Code. There 'injury' is harm illegally caused. It appears to me to follow from this that the exercise of legal powers however done can never constitute harm."

In *Abu Hassan* v. *Public Prosecutor, supra,* the appellant was a customs officer who had threatened to report to higher authority someone, who had attempted to pass through a customs shed with money in excess of the amount that could be lawfully exported. It was conceded by the prosecution that the alleged threat was a threat by the appellant to exercise his legal powers. Hepworth J. on appeal held "that the exercise of legal powers, however done, can never constitute harm" and that therefore the essential element of "injury" as defined by section 44 of the Penal Code was not present on the facts.

On the other hand, in between these two cases, Rigby J. in *Loh Kwang Seang* v. *Public Prosecutor* [3] held on similar facts that it was a case of extortion. He says at page 273:—

"If A, (a police officer) knowing that B has committed an offence in respect of which it is A's duty to take action against him, threatens to take such action against him unless B pays him a sum of money and, in consideration of such money being paid by B, forbears to take such action, then A has committed the offences of both corruption and extortion. The offence is 'extortion' because the additional — and I emphasise the word 'additional' — element is present of putting B in fear of injury by the threat of bringing a criminal accusation against him."

There is therefore a conflict of judicial authority as to whether a person, invested with certain legal powers, can commit the offence of extortion under the Penal Code, where all the elements of extortion are present but the "injury" is caused when exercising his legal powers.

My opinion on the first question raised will not resolve the present uncertainty but would, if anything, add to it and as I have come to the clear conclusion that the Acting Solicitor-General's contention on the second question raised is correct, I accordingly do not propose to say anything on the first question except this. Whenever an appropriate opportunity presents itself the provisions of section 66 of the Courts of Judicature Act 1964 should be invoked to obtain a binding decision on this point.

On the second question the respondent was on the 27th May 1963, although a police officer in the Federation of Malaya, not a police officer in the State of Singapore. Consequently he was not a person invested with any of the powers and duties of a police officer in Singapore. The threat was uttered by him in Singapore and moreover was uttered to someone other than the person accused of having committed a criminal offence. The facts and circumstances of the present case are therefore clearly different from those in *Vincent Lee's* case and *Abu Hassan's* case. The respondent on the day in question had no more legal powers in Singapore to exercise than any ordinary member of the public in Singapore.

It follows, in my opinion, assuming the correct principle to be that, so far as extortion under the Penal Code is concerned, the exercise of legal powers, however done, can never constitute "injury" as defined in section 44 of the Penal Code, the trial judge was wrong in holding that on the facts as found by him he was bound by binding authority to acquit the respondent at the close of the case for the prosecution.

The appeal is accordingly allowed and the order of acquittal set aside and the case is remitted to the trial court with a direction that the respondent should be called on for his defence.

Appeal allowed; acquittal set aside; case remitted to trial court.

Solicitor: *L. Rayner.*

CARTWITH LTD. v. J. E. LLOYD & ORS.

[O.C.J. (Chua J.) November 13, 1964]

[Singapore — Suit No. 973 of 1964]

Practice and procedure — Affidavit — Irregularity of affidavit — Application for leave to issue concurrent writ of summons and serve it out of the jurisdiction — R.S.C. 1934 O. XI rr. 1 & 4 and O. XXXVI r. 3(1).

This was an application to set aside an order giving leave to issue a concurrent writ and to serve it out of the jurisdiction.

In an *ex parte* application for leave to issue the said writ an affidavit was filed in which the deponent, a solicitor's clerk, made *inter alia* the following statements: (a) "I am advised and believe that the 4th, 5th and 6th defendants who are out of the jurisdiction of this Honourable Court are necessary and proper parties to the action brought against the 1st, 2nd and 3rd defendants who are within the jurisdiction of this Honourable Court"; (b) "I am also advised and believe that the plaintiff has a good cause of action against all the defendants".

An order was made granting the application.

Held: (1) as the affidavit did not indicate the source of the information and the grounds of belief it was irregular and was therefore inadmissible in evidence;

(2) there was therefore no evidence to show that the 4th, 5th and 6th defendants were necessary or proper parties to the action and that the plaintiffs have a good cause of action and therefore the order giving leave to issue a concurrent writ and to serve it out of the jurisdiction must be set aside.

Cases referred to:—

(1) *In re J. L. Young Manufacturing Co. Ltd.* [1900] 2 Ch. 753.

(2) *Vandrey* v. *Nathan* [1928] W.N. 154.

SUMMONS IN CHAMBERS.

M. Karthigesu for the plaintiffs.

A. P. Godwin for the 5th defendant.

G. S. Hill for the 6th defendant.

Cur. Adv. Vult.

Chua J.: In this suit the court on the 4th September, 1964, on an *ex parte* application of plaintiffs, granted leave to the plaintiffs to issue a concurrent writ of summons for service on the 4th, 5th and 6th defendants and to serve notice of the same out of the jurisdiction.

The 5th and the 6th defendants now seek to set aside the order.

The evidence used in support of the plaintiffs' application was the affidavit of Tan Choon Yong, who described himself as a clerk to the firm of Messrs. Allen & Gledhill, the solicitors for the plaintiffs and paragraph 4 of the affidavit contains, *inter alia,* the following two statements:

(a) "I am advised and believe that the 4th, 5th & 6th defendants who are out of the jurisdiction of this Honourable Court are necessary and proper parties to the action brought against the 1st, 2nd and 3rd defendants who are within the jurisdiction of this Honourable Court.";

(b) "I am also advised and believe that the plaintiff has a good cause of action against all the defendants."

The objection now made is this. It is said that the order of the 4th September, 1964, was made upon an insufficient affidavit.

The question is whether the two statements of Tan Choon Yong set out above are admissible in the interlocutory application of the plaintiffs under O. 36 r. 3(1) of the Rules of the Supreme Court, 1934 which provides:

"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, or with leave under O. 35, rule 1(2), when an affidavit may contain statements of information and belief, with the sources and grounds thereof."

Tan Choon Yong had merely said: "I am advised and believe" without indicating the source of his information and grounds of belief and in my view the affidavit was defective.

In the case of *In re J. L. Young Manufacturing Co. Ltd.*(1) the English Court of Appeal commented strongly on the irregularity of an affidavit founded upon information and belief merely without giving the source of such information and belief and held that such affidavit was inadmissible as evidence.

I hold that the two statements of Tan Choon Yong are inadmissible as evidence and that being so there is nothing in the affidavit of Tan Choon Yong which discloses that the 4th, 5th and 6th defendants are necessary or proper parties to this action or that in the belief of the deponent the plaintiffs have a good cause of action as required by O. 11 r. 4.

It is submitted on behalf of the plaintiffs that O. 11 r. 4 does not apply to an application for leave to serve a concurrent writ out of the jurisdiction and that the rule applicable is O. 11 r. 1(h) and the plaintiffs need only show — (1) that the action is properly brought against some person; (2) that the writ has already been served upon him within the jurisdiction; and (3) that the person whom it is sought to serve out of the jurisdiction is a necessary party to the action and that the plaintiffs in this case have satisfied the court on these three elements. It is further submitted that if O. 11 r. 4 is applicable it is only necessary for the plaintiffs to show that the defendants are proper or necessary parties and that the stringent rule of showing that there is a good cause of action, as in the case of an original writ, does not apply. No authority, however, has been cited to me in support of these propositions. I dissent from these propositions. It is clear that all applications under O. 11 r. 1 must comply with O. 11 r. 4 and that the affidavit in support of the application must state that in the belief of the deponent the plaintiffs have a good cause of action.

I hold that the omission to testify to a good cause of action is a fatal defect (*Vaudrey* v. *Nathan* (2)).

It follows, therefore, that the order of 4th September, 1964, must be set aside.

There will be orders in terms of the prayers in the two summonses.

Orders accordingly.

Solicitors: *Allen & Gledhill; Rodyk & Davidson; Donaldson & Burkinshaw.*

ADLAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) November 14, 1964]

[Ipoh — Criminal Appeal No. 75 of 1964]

Criminal Procedure — Previous conviction — Introduction of evidence of — Notice — Conviction under Minor Offences Ordinance, 1955, s. 29(1) — Irregularity — Not curable under Criminal Procedure Code (Cap. 6), s. 422.

In this case the appellant appealed against his conviction and sentence of one month's imprisonment on a charge under section 29(1) of the Minor Offences Ordinance, of being found in possession of a bicycle reasonably suspected of being stolen property and being unable to account satisfactorily how he came by the same. In the course of the trial, the prosecution introduced evidence of a previous conviction by an exhibit, which was a notice to the effect that "in view of your previous conviction of offences against property, the prosecution intend to apply for enhanced sentence against you by virtue of section 29(v) of the Minor Offences Ordinance No. 3 of 1955." The magistrate took into consideration the previous conviction under section 411 of the Penal Code.

Held: the introduction of the evidence of previous conviction was not a mere irregularity which could be passed over under section 422 of the Criminal Procedure Code but a breach of a cardinal principle in the administration of justice, and the conviction should be set aside.

Case referred to:—

(1) *Re Mat Junus bin Ridu* [1959] M.L.J. 129.

MAGISTRATE'S CRIMINAL APPEAL.

Soo Wai Sun for the appellant.

Abdul Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant appeals against his conviction and sentence of one month's imprisonment on a charge, under section 29(1) of the Minor Offences Ordinance 1955, of being found in possession of a bicycle reasonably suspected of being stolen property and being unable to account satisfactorily how he came by the same.

The following facts were established by the prosecution. A police constable (P.W.1) attached to the Crime Prevention Branch, Ipoh, while checking over bicycles at the Ipoh hospital for one of a certain make reported lost, found a bicycle answering the description, the number of which, stamped on the frame, was found to have been tampered with by filing in an attempt to erase it. When the appellant turned up to collect this bicycle, the police constable announced himself and, upon the appellant's failure to give a satisfactory account of how he came to have the machine, took him and the bicycle into custody. Electric-chemical treatment by the Government chemist revealed the original serial number of the bicycle and evidence thereof was properly admitted. The appellant's explanation was rejected by the learned magistrate. After convicting the appellant, the magistrate took into consideration a previous conviction in 1957 under section 411 of the Penal Code and passed the sentence above stated.

Although I am satisfied that the appellant was rightly convicted, I feel obliged to quash the conviction because, in the course of the trial, the prosecution introduced evidence of the previous conviction by Exhibit P.1, which was a notice as follows:

> *"Sungei Sinam Report No. 1472 of 1963.*
> *Possessions of suspected stolen property, section 29(1) Ordinance, No. 3 of 1955.*
>
> Take notice that in view of your previous conviction of offences against property, the prosecution intend to apply for enhanced sentence against you by virtue of section 29(v) of the Minor Offences Ordinance No. 3 of 1955."

This was not a mere irregularity which can be passed over under section 422 of the Criminal Procedure Code but a breach of a cardinal principle in the administration of justice. What the prosecution should have done was to follow the directions given by Rigby J. in *Re Mat Junus bin Ridu* (1) and I would advise all prosecuting officers to read, digest and bear in mind the judgment therein at all times.

Conviction quashed.

ABDUL RAHMAN TALIB v. SEENIVASAGAM & ANOR.

[O.C.J. (Hepworth J.) December 5, 1964]

[K.L. — Civil Suit No. 789 of 1963]

Libel and Slander — Defences — Qualified privilege — Fair comment — Justification — Defamation Ordinance, 1957, ss. 5, 8 and 9.

The plaintiff claimed damages for slander in respect of a verbal statement made by the 1st defendant, and for libel in respect of written statements made by the 1st and 2nd defendants, alleging corrupt practices by the plaintiff. The alleged slander was contained in a statement made by the 1st defendant at a meeting at the Chinese Assembly Hall, Kuala Lumpur, referring to and repeating what he had already said as a member of Parliament in the House of Representatives, and the alleged libels were contained in (a) a written statement handed over by the 2nd defendant to persons present at that meeting and (b) a written statement handed over by the 1st defendant to a press representative at that meeting. The 1st defendant in his defence pleaded qualified privilege, fair comment and justification. The second defendant pleaded justification. The first defendant put his plea of qualified privilege under five heads submitting that the words complained of constituted:—

(a) a fair and accurate report of a debate or proceeding in Parliament and are privileged at common law;

(b) a Parliamentary report published by or under the authority of the House and are privileged by virtue of section 28 of the Houses of Parliament (Privileges and Powers) Ordinance, 1952;

(c) information to the public on a matter of public interest;

(d) a communication in which he and the persons to whom the statement was made had a common interest;